

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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John Wiley & Sons, Inc.

Plaintiff,

v.

Supap Kirtsaeng

Defendant.

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Civil Action No. 08-cv-7834-DCP

**REPLY DECLARATION OF E. JOSHUA ROSENKRANZ IN SUPPORT OF  
DEFENDANT SUPAP KIRTSANG'S MOTION FOR AN AWARD OF ATTORNEYS'  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

DECLARATION OF E. JOSHUA ROSENKRANZ

I, E. Joshua Rosenkranz, declare as follows:

1. I am a member of the bar of the State of New York and the firm Orrick, Herrington & Sutcliffe, LLP (“Orrick”), counsel to defendant Supap Kirtsaeng (“Mr. Kirtsaeng”) in this action. I submit this declaration in further support of Mr. Kirtsaeng’s Motion For Award of Attorneys’ Fees and “Full Costs” Under Section 505 of the Copyright Act.

STATEMENT

2. Orrick was retained to represent Mr. Kirtsaeng at the Supreme Court level after the Second Circuit denied Mr. Kirtsaeng’s appeal, and denied his request for hearing en banc. Orrick agreed to represent Mr. Kirtsaeng pro bono as we understood that Mr. Kirtsaeng was unable to make any further payments for his legal representation. At the time Orrick was retained, we fully intended to seek legal fees pursuant to the Copyright Act if we were to prevail at the Supreme Court level. Attached as Exhibit A is a true and correct copy of the October 8, 2013 letter from E. Joshua Rosenkranz to Sam P. Israel, which I understand was requested by counsel for Wiley and provided to them on October 10, 2013.

3. I have been an appellate litigator for over twenty years and regularly handle matters in the Supreme Court of the United States. I have filed briefs in more than 60 Supreme Court cases and have presented oral argument in the Court eight times in the past eight years. I have personally argued more than 170 appeals in state and federal appellate courts across the nation and have served as attorney of record in some 1,500 other appeals.

4. I have led several appeals this year alone where the fees exceed \$2 million. In my experience, fees in large complex cases typically exceed \$1 million.

5. The billing records submitted by Orrick are sufficiently detailed to allow the Court to determine the nature of the work performed. Each entry contains all required information: the name of the attorney along with the date, time, and nature of the work performed. While it is unclear which specific entries Wiley complains of, the following examples clearly show that there is sufficient information in Orrick’s time entries to determine

the nature of the work performed (these entries are included in Exhibit J to the July 31, 2013 Declaration of E. Joshua Rosenkranz). Each describes in detail the tasks performed:

- ID No. 18281045: November 14, 2011, Feerst, Alex Jonathan, 8.5 hours billed, description "Draft argument section of cert petition; review Costco cert petition and amicus briefs; review legislative history of Copyright Act manufacturing clause; discuss possible amicus brief with Ms. McSherry of EFF."
- ID No. 18349127: November 30, 2011, Feerst, Alex Jonathan, - 8.80 hours billed, description "Revise cert petition; research legislative history; check petitioner's appendix and case citations; attend meeting to discuss merits arguments with J. Rosenkranz, A. Hurst, L. Simpson, G. Ramsey, and M. Shapiro."
- ID No. 19228769: June 19, 2012, Shapiro, Marc. R., 10,10 hours billed, description "Calls with eBay, Marvin Ammori, Krista Cox re: amicus brief and strategies; calls with N. Lenning re: same; conversation with J. Rosenkranz re: amicus briefs; coordination with J. Greenfield re: appendix; discussion with A. Feerst re: manufacturing clause and DMCA take down notices; research on DMCA take down notices; revise brief to incorporate DMCA point."
- ID No. 19526864: August 27, 2012, Lenning, Nicholas F., 9.00 hours billed, description "Draft and edit reply brief; review merits and amicus brief from Costco v. Omega; review legislative history of Section 602(a) for use in argument re purpose of 602(a)."
- ID No. 19646528: September 6, 2012, Feerst, Alex Jonathan, 4.40 hours billed, description "Conduct legal research on international intellectual property exhaustion policy; draft discussion of international exhaustion policy norms; discuss retroactive application of Copyright Act with B. Ginsberg."
- ID No. 19581068: September 9, 2012, Lenning Nicholas F., 8.90 hours billed, description "Review amicus briefs filed in support of Respondent; draft a

comprehensive digest of amici arguments and noteworthy passages; review and edit the draft of Section Four of the reply brief.”

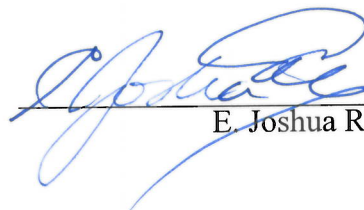
- ID No 19795796: October 25, 2012, Hurst, Annette, 8.80 hours billed, description “Discussions regarding statutory interpretation issues and research regarding AHRA issue; review emails from amici counsel regarding various issues and responses; attend Georgetown moot court; de-brief re moot court; continuing assistance re argument preparation.”

6. Attached hereto as Exhibit B is a true and correct copy of the October 1, 2013 agreement between Orrick, Sam P. Israel, and Mr. Kirtsaeng.

7. Attached hereto as Exhibit C is a true and correct copy of the official transcript of the October 29, 2013 oral argument before the United States Supreme Court in *Kirtsaeng v. John Wiley & Sons, Inc.*, No. 11-697.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of November, 2013, at New York, New York.



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E. Joshua Rosenkranz